Local No. 6-0682, Paper, Allied-Industrial Chemical and Energy Workers International Union, AFL–CIO–CLC *and* Checker Motors Corporation. Case 7–CB–13325

June 16, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND ACOSTA

On December 12, 2002, Administrative Law Judge William N. Cates issued the attached decision. The Respondent filed exceptions, a supporting brief, and a reply brief, and the General Counsel and the Charging Party filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified below.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Local No. 6-0682, Paper, Allied-Industrial Chemical and Energy Workers International Union, AFL–CIO–CLC, Kalamazoo, Michigan, its officers, agents, and representatives shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1.

"1. Cease and desist

"(a) Refusing, as the exclusive bargaining reprsentative of the Company's employees in the appropriate unit, to bargain in good faith collectively with the Company.

"(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act."

2. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. June 16, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

R. Alexander Acosta, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse, upon request, to meet and bargain in good faith with Checker Motors Corporation with respect to wages, hours, and other terms and conditions of employment affecting the employees in the appropriate unit.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. See *Standard Dry Wall Products*, 91 NLRB 544, 544-45 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We agree with the judge that the Board's decision in *Tri-Pak Machinery, Inc.*, 325 NLRB 671 (1998), does not compel deferral in this case. In *Tri-Pak*, unlike here, the charging party union had a right to invoke the parties' broad arbitration procedure, thereby ensuring that a mutually agreed-upon dispute resolution procedure existed to arbitrate the contract dispute. Id. at 673. By contrast, as the judge noted, deferral here was inappropriate because the Charging Party, Checker Motors, had no ability to invoke the grievance procedure to resolve the contract dispute. In distinguishing *Tri-Pak*, we do not rely on the judge's conclusion that *Tri-Pak* is inapposite because the parties here disputed the existence of the contract at the time the Respondent filed its July 2002 grievance.

Similarly, in adopting the judge's finding that the Respondent violated Sec. 8(b)(3) of the Act, we find it unnecessary to pass on the judge's alternative holding that the Union worded its March 18, 2002 notice to amend the collective-bargaining agreement so broadly that it actually constituted a notice to terminate the contract.

[3] We will substitute a new notice in accordance with our recent decision in *Ishikawa Gasket America, Inc.*, 337 NLRB No. 29 (2001).

WE WILL NOT in any like or related manner restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request by Checker Motors Corporation, bargain collectively, as the exclusive bargaining representative of the employees in the appropriate unit, with respect to wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed contact.

LOCAL NO. 6-0682, PAPER, ALLIED-INDUSTRIAL CHEMICAL AND ENEGRY WORKERS INTERNATIONAL UNION, AFL–CIO–CLC

A. Bradley Howell, Esq., for the General Counsel.
Kevin M. McCarthy, Esq. and *Jedd E. Mendelson, Esq.,* for the Company.
Stanley Eisenstein, Esq., for the Union.

DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge. I heard this case in Kalamazoo, Michigan, on October 3, 2002.[1] The case originates from a charge, filed by Checker Motors Corporation (the Company) on May 31, against Local No. 6-0682, Paper, Allied-Industrial Chemical and Energy Workers International Union, AFL–CIO–CLC (the Union). The prosecution of this case was formalized on July 25, when the Regional Director for Region 7 of the National Labor Relations Board (the Board), acting in the name of the Board's General Counsel, issued a complaint and notice of hearing (the complaint) against the Union.

The complaint alleges the Union violated Section 8(b)(3) of the National Labor Relations Act (the Act) when between about May 29 and June 13, the Union, by its agent, International Representative David Ferson (Union International Representative Ferson), failed and refused to bargain with regard to collective-bargaining agreement proposals submitted by the Company during negotiations, unless such proposals coincided with proposals submitted by the Union. It is also alleged that since on or about June 13, the Union has refused to engage in any further negotiations toward a collective-bargaining agreement. Finally, it is alleged that by its overall conduct the Union has failed and refused to bargain in good faith with the Company.

The Union admits the Board's jurisdiction is properly invoked,[2] that it is a labor organization within the meaning of Section 2(5) of the Act and that Union International Representative Ferson is it's agent within the meaning of Section 2(13) of the Act.

The Union denies bargaining in bad faith in violation of the Act. Rather, the Union asserts, it, at the Company's request, agreed to listen to company contract proposals months before their most recent collective-bargaining agreement was to expire, to see if a new early agreement could be arrived at. The Union contends its willingness to listen to the Company's proposals did not constitute a waiver of its statutory, as well as contractual, right to notice if the Company wanted to terminate the collective-bargaining agreement. The Union notes article VIII of the parties' collective-bargaining agreement, as well as Section 8(d) of the Act, sets forth certain notice requirements the parties must follow. The Union asserts that after early efforts by the parties to arrive at a new collective-bargaining agreement was unsuccessful it provided the Company with a "Notice to Amend" the parties' collective-bargaining agreement. The Union asserts that pursuant to article VIII of the parties' collective-bargaining agreement and their "Notice to Amend," the collective-bargaining agreement rolled over or extended its effectiveness for another year. The Union asserts that when it refused to bargain over company proposals which were not incorporated in its "Notice to Amend" it was not obligated to do so. The Union correctly asserts the Company never at any time filed a notice to amend or notice to terminate the collective-bargaining agreement.

I have studied the whole record, the party's briefs, and the authorities they rely on. Based on more detailed findings and analysis below, I shall conclude and find the Union violated the Act substantially as alleged in the complaint.

A. The Facts

The Company for many years produced vehicles widely known as Checker Taxi Cabs. In more recent years, and at present, it manufactures automotive stampings and assembles such as fenders, doors, hoods, and other metal automotive parts. The Company's principle customer is the General Motors Corporation. The parties have had a long-term bargaining relationship. From about 1943,[3] and at all times material, the Union has been recognized by the Company as the exclusive collective-bargaining representative of the following employees of the Company, herein called the unit:

> All production and maintenance employees employed by the Company at its Kalamazoo facility; but excluding all watchmen, timekeepers, clerical employees, draftsmen, Formen, Assistant Formen, office employees, all experimental employees in Department 54 and all guards and supervisors as defined in the Act.

It is admitted the unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Since about 1943, the Company's recognition of the Union has been embodied in successive collective-bargaining agree-

[1] All dates hereinafter are 2002, unless otherwise indicated.

[2] It is admitted the Company is a corporation with an office and place of business located in Kalamazoo, Michigan, where it is engaged in the manufacture and nonretail sale of automotive parts. During the calendar year ending December 31, 2001, a representative period, the Company in conducting its business operations sold and shipped from its Kalamazoo, Michigan facility goods valued in excess of $50,000 directly to points outside the State of Michigan. The parties admit, the evidence establishes and I find the Company is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act.

[3] Although the complaint alleges "since about 1952" chairman of the Union's bargaining committee, James Savage (Union Bargaining Chairman Savage), testified, without contradiction, regarding terms in the parties' 1943 collective-bargaining agreement.

ments, the most recent of which was by its terms effective from June 14, 1999, to June 13, 2002. I find, based upon Section 9(a) of the Act, the Union has been, since 1943, and continues to be, the exclusive collective-bargaining representative of the unit.

Well prior to the expiration date of the parties' most recent collective-bargaining agreement, Company Chief Operating Officer Larry Temple, approached Union Bargaining Chairman James Savage about a need for early negotiations. Temple told Savage the Company was under some pressure from a major customer for price reductions and that "health care cost were going out of site." Savage told Temple, at their early December meeting, that Temple would have to present his request to the entire union bargaining committee because he could not make such a decision on his own.

On December 20, 2001, Company Chief Operating Officer Temple called a meeting of the entire Union bargaining committee. Temple told the Union's committee the Company wanted to have early negotiations and added the Company had a short list of concerns to negotiate. Temple explained that the Company's concerns centered around escalating health costs, productivity improvement in order to be more competitive and absenteeism. Temple explained the Company wanted early negotiations to try and work out an agreement before June because it wanted to avoid the need for "banking parts."[4]

The Union agreed to early meetings or negotiations[5] but stated they would need to poll their membership to see what the membership's concerns were. The union committee stated at the December 20, 2001 meeting they were very concerned about money for the employees' pension fund and job security. The Union and Company agreed to a number of dates for early negotiations. Company Vice President of Human Resources Marcia Koestner in a January 30 memorandum distributed to certain company officials and the union bargaining committee set forth agreed upon dates for negotiations which were February 18 and 25 and March 1, 6, 7, 8, 12, 13, and 14 to be held at an area hotel.

The Union requested and the Company granted the employees time at 1:30 p.m. on February 14, for a general membership meeting which was held at an area fairgrounds. The general membership met to talk about contract concerns and proposals.[6]

The parties met for their first negotiating session on February 18. The Company was represented by Company Chief Operating Officer Temple, Vice President of Human Resources Koestner, company officials, Walburn and Markin, as well as Local Counsel Kevin McCarthy. Attorney McCarthy acted as chief spokesperson for the Company. The Union was represented by its spokesman, International Representative Ferson, along with Union Bargaining Committee Chairman Savage and employees Dennany, Norwood, and Miller.[7] The Company explained its purpose in asking for early negotiations namely that its chief customer, General Motors Corporation, was asking that the Company decrease its prices for the coming year by 4.5 percent. The Company explained such a decrease or reduction would amount to approximately $1.7 million in give backs to General Motors Corporation. Company Chief Operating Officer Temple testified, "[w]e told them our health care costs were really hurting us badly and we reviewed . . . our labor burden cost [and] . . . . We're here to try to get a deal done early to avoid having to build banks, that we had a contract that expired on June 14th." Union International Representative Ferson told the Company that any deal done early by the Union would have to contain increases in wages and benefits. Ferson also explained the Union's ratification procedure that included a vote by the membership as well as the signed approval of the International Union before any agreement could go into effect.

The Company presented a 15-point 4-page initial bargaining proposal to the Union at the February 18 session. Company Attorney McCarthy, "ran through" each of the Company's proposals and explained what the Company was looking for. The Company's initial bargaining proposal covered health insurance, grievance procedures, pending grievances, employees returning to the bargaining unit, recall procedures, leaves of absence, holiday shutdowns, disability benefits, health insurance restoration, vacations, wage rates for new hires, plant relocation/severance agreement, wages, absenteeism/tardiness, and duration.

At this first meeting the Union presented a 1-page proposal on "successors and assigns" and a 44-point 2-page document entitled, "2002 Suggested Contract Discussions." The Union noted at the top of its 44 points for discussion; "The Company has approached the Union about the possibility of reaching an early agreement. The Bargaining Committee has met to review items that we may want to discuss with the Company in an attempt to reach an early agreement." Union International Representative Ferson covered with the Company the 44 items on the Union's proposal, item by item. Some of the Union's items addressed temporary transfers, parking lots, overtime procedures, modification to the incentives system, wages, holiday schedules, improvement of dental and vision benefits, insurance benefits, improvements in vacation eligibility, enhanced bereavement pay, modifications to the no-strike clause, additions to the skilled trade classifications, enclosing all break areas, and reviewing temporary transfer pay requirements.

No agreement was reached at the February 18 session.

The parties' next met on February 25, with the same negotiators. The Union presented the Company a 2-page proposal on overtime. According to Company Chief Operating Officer Temple the Union was having a "hard time" with the current overtime provisions in the parties' most recent collective-bargaining agreement and wanted to change them. Union Bar-

[4] Temple explained "banking parts" meant the costly building of an inventory of parts by extended overtime to meet customer demand in the event of a work stoppage by the Union at the collective-bargaining agreement expiration in June.

[5] Union counsel at trial objected to the term negotiations in describing the meetings. The Union contends they agreed to meetings which were more in the nature of discussions. I am using the term negotiations simply to described the parties' meetings.

[6] The Union's notice of the general membership's meeting stated in part that "all union members should make every effort to attend this meeting" adding "the purpose of this very important meeting is to discuss contract proposals."

[7] The negotiating teams for the respective parties remained, for the greater part, the same throughout their meetings.

gaining Committee Chairman Savage testified the Union made several proposals on overtime. Union International Representative Ferson testified the parties spent the majority of their overall negotiating efforts on overtime and health care issues. Ferson presented the Company a proposal concerning yearend holiday shutdown days with provisions for paid, as well as certain unpaid, holidays. The Company verbally made its initial wage proposal which "was in the neighborhood of 30 plus cents an hour [f]or three years."

Company Chief Operating Officer Temple told the Union at the February 25 session the Union's proposals would cost the Company $950,000 for the first year and noted the Union had yet to make a wage proposal. According to Temple, Union International Representative Ferson responded the Company could save that much by not preparing for a strike. The Union presented two written proposals regarding job descriptions. The parties discussed all the proposals without arriving at any agreement.

The parties met in sessions on March 1, 6, 7, and 8. During these sessions the Company informed the Union it was looking for a "cost neutral" agreement. Union International Representative Ferson testified the Union viewed the Company's proposals as "concessionary" not "cost neutral." At the March 7 session the Union presented a 4-page revised noneconomic set of proposals. The Union explained each of its revised proposals. Some tentative agreements were arrived at during the March sessions.

Specifically at the March 8 session, the parties' agreed on matters such as changing certain dates in the collective-bargaining agreement, changing certain union officials names in the collective-bargaining agreement, increasing life insurance coverage for the employees, and agreeing to dates certain when vacation checks would be available. At some point in the March sessions the Union proposed a 1-year extension of the collective-bargaining agreement with some language changes but wages and related economic matters would remain the same. The Company responded it did not see how that would help their financial situation. Union International Representative Ferson made a counter proposal on health coverage in which he proposed splitting the coverage into bargaining unit and nonbargaining unit categories. The Company explored this with its insurance carrier, but the parties' were never able to agree on health insurance changes.

At the conclusion of the parties' negotiating session on March 8, Company Attorney McCarthy gave the negotiators a synopsis of where he thought negotiations were. McCarthy explained the Company had put forth proposals toward a cost neutral contract and asserted what the Union had proposed, without even discussing wages, would cost approximately $950,000 the first year. McCarthy opined the parties' were going in opposite directions. McCarthy again stated costs were escalating and one of its customers was asking for a $1.7-million give back in price adjustments on parts. McCarthy explained that any moneys spent to protect the customer between then and mid-June would not be available for benefits in any new collective-bargaining agreement. McCarthy admonished the Union, "If you're prepared to go toward a neutral contract with us, we need to see meaningful movement on your part addressing some of our proposals and, when you're ready to do that, give us a call." McCarthy summarized saying, "[U]nless we can start turning this ship around and dealing in realities, moving toward a cost neutral contract, we're going to have to go to June and see if there's a way to solve this problem then because the contract expires June 14, and what ever money is spent by the Company to protect their customer between then and June 14 wont be there in June." Company Attorney McCarthy indicated the Company was prepared to go forward toward a cost neutral contract but needed meaningful movement on the Union's part by addressing some of the Company's proposals and added the Union; "When your ready to do that give us a call."

Union Bargaining Committee Chairman Savage recalled Company Attorney McCarthy telling the union bargaining committee at the March 8 session, "If we weren't willing to enter into an agreement like the Company had outlined we were wasting our time." Savage said the union negotiators left the session at that time. The Company waited until 4 p.m. that day and left also.

Thereafter, Union International Representative Ferson wrote, Company Vice President of Human Resources Koestner on March 18 notifying the Company that pursuant to article VIII, "Term of Agreement" of the parties' collective-bargaining agreement the Union was providing notice of the Union's desire to amend the parties' agreement. In his letter Ferson also requested the Company provide the Union with certain specified information.

Company Chief Operating Officer Temple testified the Company arranged for another session with the Union for May 9. The same negotiating committee members were present for both sides except the Company added Attorney Theodore M. Eisenberg to its negotiating committee.

At the May 9 session Company Attorney Eisenberg spoke for the Company. Eisenberg explained the Company had agreed to General Motors Corporation's demand for a $1.7-million reduction in cost and added health care costs had escalated not the 15 to 16 percent earlier stated, but rather 26 percent and added the Company was expending funds to build a parts bank for its protection upon the collective-bargaining agreements' expiration in mid-June. Attorney Eisenberg expressed confusion as to the actual expiration date for the parties' collective-bargaining agreement. According to Temple, Union International Representative Ferson responded he was not sure the collective-bargaining agreement would expire. Temple said this was the first time the Union had expressed an opinion that the contract did not expire but rather renewed or extended for another year. According to Union Bargaining Committee Chairman Savage, Ferson explained that to cancel the agreement required a 60-day notice prior to the expiration date of the collective-bargaining agreement and noted the Company had not provided such notice. Union International Representative Ferson testified he told Company Attorney Eisenberg, "I think the contract has rolled for another year." Eisenberg wanted to know how he came to that conclusion. Ferson responded, it was outlined in the parties' collective-bargaining agreement. The May 9 meeting ended immediately

thereafter with the parties' agreeing to get together about future session dates.

The parties' agreed to meet for further sessions on May 29 and 30 and June 3, 11, 12, and 13.

Company Attorney Eisenberg wrote Union International Representative Ferson, on May 17, asking that the Union give an unequivocal and definite statement to the Company that the Union's position was that the collective-bargaining agreement would not expire on June 14, but rather extended for an additional year and that the no-strike clause remained in effect.

Company Chief Operating Officer Temple met with Ferson on May 21, about Eisenberg's May 17 letter. Ferson told Temple he had not seen Eisenberg's letter, but the Union's position was that "the contract rolls over for another year." Temple provided Ferson a copy of Eisenberg's letter.

Ferson responded to Eisenberg's May 17 letter. In his May 21 response Ferson indicated he had told Company Chief Operating Officer Temple that day it was the Union's position that not only did the no-strike and no lockout clauses remain in effect, but that all terms and conditions of the then current collective-bargaining agreement remained in effect unchanged for 1 more year, unless modified by mutual agreement. Ferson said the basis for the contract extension was the "Term of Agreement" clause of the collective-bargaining agreement. In his letter Ferson denied any "rumblings" concerning a strike at the Company. Ferson further noted that negotiations towards an "early" agreement "failed" on March 8 when the Company's attorney, after only six of nine scheduled meetings, issued an ultimatum that the Union call the Company when they were ready to reach an agreement on the Company's terms. Ferson asserted in his letter that the Company's ultimatum resulted in no further discussions concerning an early agreement.

Company Chief Operating Officer Temple credibly denied the Company ever told the Union to call them whenever they were ready to reach an agreement on company terms.

In a May 24 letter to Union International Representative Ferson, Company Attorney Eisenberg noted the Union's position, contrary to the Company's, that the collective-bargaining agreement would not expire on June 14, but rather extended for another year. Eisenberg asked to arbitrate that issue and provided Ferson a request for arbitration panel form and urged Ferson to sign it on behalf of the Union. The request form indicated an arbitrator should decide the issue of whether the collective-bargaining agreement between the parties rolled over or extended for another year.

The parties' met in session on May 29. Company Attorney Eisenberg asked again if the matter of whether the contract renewed for another year could be submitted to arbitration. According to Company Chief Operating Officer Temple, Ferson said the Union did not want to go to arbitration and added there was "no mechanism" for the Company to take that or any issue to arbitration. Union Bargaining Committee Chairman Savage testified Ferson simple said the collective-bargaining agreement had "rolled over" for another year. International Union Representative Ferson said he told Company Attorney Eisenberg the Union was "considering what [its] position would be as to whether or not [the Union] was going to ultimately arbitrate . . . [but] he could expect a response by Monday of the following week."

At the May 29 bargaining session, the Union presented a 3-page set of noneconomic proposals to the Company with a notation:

> Pursuant to the March 18, 2002, Union notification to the Company of the Union's desire for amendments to the existing contract the Union hereby tenders the non-economic portion of these desired changes for consideration to the Company as to possible mutual agreement to allow for changes to the exiting agreement between the parties.

The Union also presented a 1-page document setting forth its economic proposals with the same notice referred to above, namely that the economic proposals were presented pursuant to the Union's desire for amendments to the existing collective-bargaining agreement.

At the May 29, bargaining session, the Company presented four pages of economic and noneconomic proposals. According to Company Chief Operating Officer Temple, International Union Representative Ferson stated the Union was under no obligation to bargain over the Company's proposals because the Company had never given a notice to amend or to terminate[8] the collective-bargaining agreement, and as such, the Union did not have to bargain over any of the Company's proposals. Company Attorney Eisenberg stated, "[T]hat it was highly, highly, highly, a whole bunch of highlys unlikely" the parties would reach an agreement "unless [the Union] changed their mind about bargaining over [the Company's] proposals."

The parties stipulated that during the May 29 bargaining session and continuing through the June 12 session the Union took the position it would only bargain over it's proposals presented at the May 29 bargaining session and would only bargaining on company proposals presented on that date if such proposals coincided with the Union's proposals.

In a June 2 letter to the Federal Mediation and Conciliation Service (FMCS), Union International Representative Ferson notified FMCS the Company had no contractual right to submit for arbitration the issue of whether the parties' collective-bargaining agreement renewed for an additional year. Ferson advised FMCS the Union had not, and would not, agree, contractually or otherwise to submit that issue to arbitration. The Union requested FMCS stop processing the Company's "unilateral" demand for that issue be arbitrated.

Thereafter the parties held sessions on June 3, 11, 12, and 13.

At the June 3 meeting, Company Attorney Eisenberg again asked if the Union had changed it's position regarding arbitrating the issue of whether the collective-bargaining agreement would extend for another year. Union International Representative Ferson explained the Union was "not going to proceed to arbitration" as the Union considered "there was no responsibility to do so"; Ferson said, "[T]here was no right for the Company [to] grieve" . . . that the contract did not allow the employer to submit to arbitration that it was the Union who had to be the moving party" and "there was no mechanism for the

[8] It is undisputed the Company never at any time gave a notice to amended or to terminate the collective-bargaining agreement.

be the moving party" and "there was no mechanism for the employer to request arbitration."

At the June 3 session the Union specifically advised the Company it would not bargain with respect to the following provisions of the Company's May 29 contract proposals:

Section I. B.	Wages For New Employees
Section II	Health Insurance
Section III	Pension, paragraphs B and C.
Section IV	Grievance Procedure
Section V	Pending Grievances
Section VI	Return to Bargaining Unit
Section VII	Recall procedure
Section VII	Leaves of Absence
Section X	Disability Benefits
Section XI	Vacations
Section XII	Plant Relocation/Severance Agreement
Section XIII	Excessive Absenteeism and Tardiness Program

After further discussions Company Attorney Eisenberg stated, "If you are not going to bargain over our proposals, there's no hope of reaching an agreement."

The parties' stipulated the Union took the position from the May 29 bargaining session through the June 12 bargaining session, that it would only bargain with respect to the following items from the Company's May 29 contract proposals:

Section I. A.	Wages for Full Time Employees
Section III	Pension, paragraph A.
Section IX	Holiday Shutdown
Section XIV	Term of Agreement-Termination Date

At the June 12 session the Company presented its final contract proposals, which covered economic as well as non-economic matters.

According to Company Chief Operating Officer Temple no sessions have been held after June 13, nor has the Company demanded that the Union come to any sessions since that date.

On June 13, Union International Representative Ferson wrote the Company as follows:

> Thursday, June 13, 2002
>
> Mrs. Marcia Koestner
> Vice President Human Resources
> Checkers Motors
> 2016 N Pitcher Street
> Kalamazoo, MI 49007
>
> Dear Mrs. Koestner:
>
> As you know the Company has provided the Union with a final proposal containing various items that do not coincide with the Union's items of desired changes pursuant to its March 18, 2002 notice of desire for amendments to the existing contract. That proposal furthers the Company's failure and refusal to bargain in good faith by conditioning agreement on the Union accepting proposals which the Company has improperly tendered, which actions(s) have been made subject of a charge filed by the Union.
>
> It has become obvious to the Union that your Mr. Eisenberg's statement of June 3rd concerning there being "no hope of reaching an agreement" was tragically prophetic and in hindsight a clear warning as to the extent the Company is willing to go in engaging in improper and illegal activities to extract concessions from our membership.
>
> The Union has come to the realization that in fact the parties will not be able to achieve mutual consent to change the existing contract pursuant to the terms of Article VIII of the agreement unless and until we concede to the Company's improper demands. Accordingly, effective immediately PACE and its Local 6-0682 withdraw our March 18, 2002 notice of the Unions desire to amend the agreement. Further by copy of this letter and to the Michigan Employment Relations Commission the Union withdraws its March 18, 2002 Notice to Mediation Agencies (FORM F-7).
>
> PACE Local 6-0682 membership will continue to report to work as usual and be working under the terms of the automatically renewed agreement. Again, we would consider any unilateral changes(s) by the Company as a breach of the contract and or a violation of the law.
>
> Sincerely,
>
> /Signature/
> Mr. Daniel E. Ferson
> International Representative
>
> Copy to Federal Mediation and Conciliation Service
> And to Michigan's Bureau of Employment Relations
> Mr. T. Eisenberg

The June 13 expiration date for the parties collective-bargaining agreement passed uneventfully. On July 15, the Union filed a grievance alleging, "the Company is in violation of the term of agreement language (Article VIII), Article V Section 8 and 22, Article VI Section 18, Article II and current retiree contract language and/or other Articles and Sections." Union Chairman of Bargaining Committee Savage testified the grievance was filed because the Company imposed changes in the current collective-bargaining agreement that the Union contends renewed or rolled over for another year.

Union International Representative Ferson specifically testified it was the Company's unilaterally instituted changes to the parties collective-bargaining agreement that triggered the grievance and added the Union was "absolutely" prepared to arbitrate the grievance. Ferson acknowledged some of the changes the Company implemented were contained in the Company's final contract proposals.

On August 30, Company Attorney Mendelson wrote Union International Representative Ferson regarding the Union's demand for arbitration of its grievance. In the letter the Company proposed the parties consult to see if they could arrive at a mutually agreeable arbitrator. The Company, however, also advised it was reserving all its rights and defenses in connection with the grievance, including, but not limited to: "(1) the Union's refusal to 'unbundle' its grievances, (2) the expiration of the contract, (3) NLRB proceedings, (4) Union bad faith, (5)

estopped, and (6) any other defense, whether or not asserted at this time."

Union International Representative Ferson responded to Mendelson on September 4, rejecting the Company's proposal for a mutually agreed upon arbitrator pointing out the contract specifically called for the selection to be made from an FMCS panel. Ferson also requested clarification of all the Company's defenses to the grievance except the one labeled "NLRB proceedings."

On September 6, Company Attorney Mendelson responded to Ferson's September 4, letter saying the Union was wrong insisting on an FMCS alternate striking method to select an arbitrator. Mendelson insisted FMCS encourages parties to reach an agreement on a method for selecting an arbitrator when the expired labor agreement does not specify a method. Attorney Mendelson then advised:

> Finally, in view of the Union's bad faith refusal to process or resolve related grievances in a timely fashion before contract expiration, the Union's bad faith refusal to define, explain or separate its post-contract termination bundle of grievances (despite the Company's repeated requests), the dismissal of the Union's spurious unfair labor practice charge and the pending NLRB hearing concerning the Union's repeated and blatant violations of the National Labor Relations Act, we do not believe that further discussion of the Company's defenses to the Union's belated bad faith posturing is warranted.

In as much as article VIII "Term of Agreement" of the parties collective-bargaining agreement is intertwined with the issues herein it is set forth in full:

ARTICLE VIII

TERM OF AGREEMENT

> THIS AGREEMENT between the undersigned officers of the Company, on behalf of the Company, and the undersigned officers and members of the Union Bargaining Committee on behalf of Local Union No. 6-0682 of the Paper, Allied Industrial, Chemical & Energy Workers International Union, shall become effective June 14, 1999, and shall extend until June 13, 2002, and from year to year thereafter unless changed by consent of both parties. Should either party desire to amend or cancel this Agreement, such party shall give the other sixty (60) days written notice before the expiration of the contract.

B. The Deferral Issue

The Union seeks to have all complaint allegations herein resolved pursuant to the grievance-arbitration procedure of its collective-bargaining agreement with the Company under *Collyer Insulated Wire*, 192 NLRB 837 (1971), and *United Technologies Corp.*, 268 NLRB 557 (1984). The Union argues the crux of the dispute herein involves the obligations of the parties under article VIII "Term of Agreement" of their collective-bargaining agreement with emphasis on the parties obligations when a notice to amend the agreement is filed by one of the parties.

The Government argues the case should not be deferred under the *Collyer* doctrine because before the parties collective-bargaining agreement's expiration date of June 13, and at a time when both parties agreed the collective-bargaining agreement containing a grievance arbitration procedure was in effect, the Union unequivocally refused to arbitrate the issue of whether the contract expired or automatically renewed for another year. The Government notes the Union rests its claim for deferral on a grievance it filed on July 15, a month after the collective-bargaining agreement's normal expiration date, and at a time when the Company disputes the existence of the collective-bargaining agreement. The Government contends deferral is inappropriate when the existence of the collective-bargaining agreement containing the arbitration clause is in dispute. The Government also contends deferral is inappropriate, when, as here, the Charging Party Company did not have the right to invoke arbitration under the grievance-arbitration procedure.

The Company takes the position the Union's argument for deferral is frivolous, and notes the Union had consistently refused to arbitrate at the Company's request and did not even raise deferral in its initial answer but only did so after the Board's dismissal of its Section 8(a)(5) and (1) charge against the Company. The Company argues, as does the Government, that deferral is inappropriate when the charging party before the Board does not have the right to trigger arbitration under the contractual dispute resolution mechanism. The Company specifically points out the parties collective-bargaining agreement did not empower it to file a grievance or move a contractual dispute into arbitration.[9]

The parties have sought to have the issue of whether the contract extended or rolled over for an additional year submitted to arbitration but never at the same time or pursuant to the same rationale.

In addressing this issue, I first note that after learning from the Union in early-May that it was the Union's position the parties agreement extended or rolled over for an additional year, the Company sought to have that issue submitted to arbitration. The Company in late-May even forwarded a request for arbitration panel form to the Union for its approval. The Union objected to having the issue presented to arbitration contending there was "no mechanism" for the Company to take that, or any other issue, to arbitration. The Union even notified FMCS on June 2, the Company had no contractual right to submit for arbitration the issue of whether the parties' collective-bargaining agreement renewed for an additional year. The Union advised FMCS it had not, and would not agree, contractually or otherwise, to submit the issue to arbitration. The Un-

[9] The Company also advances other reasons that deferral is not appropriate namely; the grievance is nonarbitrable because of the expiration of the agreement; the Union is estopped from arbitrating this grievance since it refused to proceed to arbitration when requested to do so by the Company; the Union's grievance is really multiple grievances which the Union refuses to unbundled; an arbitrator should defer to a decision of the Board; and, the Union's bad-faith refusal to bargain precludes arbitrating its grievance. By my disposition of this issue I need not address all of the Company's reasons for nondeferral.

ion specifically requested FMCS stop processing the Company's "unilateral" attempt to have the issue arbitrated.

After June 13, and specifically on and after July 15, the Union changed its position and sought to have the issue of whether the parties' agreement expired on June 13 or renewed for another year submitted to arbitration. The Company at that point changed its position and declined arbitration.

The parties collective-bargaining agreement is clear that employees or the Union may file grievances but only the Union can initiate arbitration. Stated differently the grievance and arbitration mechanisms in the parties' contract are one-sided in that the Union alone has the right to initiate arbitration.

In agreement with the Government and Company, I find deferral is inappropriate in this case because the parties' collective-bargaining agreement does not provide the charging party (Company herein) with access to the grievance/arbitration procedure. The Board in *Communications Workers (C & P Telephone)*, 280 NLRB 78 fn. 3 (1986), adopted the judge's denial of a motion for deferral to arbitration in an 8(b)(3) refusal to bargain case by holding:

> In adopting the judge's denial of the Respondent's motion for deferral to arbitration, we solely rely on the fact that the parties' collective-bargaining agreement does not provide for the Charging Parties with access to the grievance/arbitration procedure and that to allow Respondent to waive this procedural defect would fundamentally alter the existing dispute resolution procedure.

I am persuaded the Board's holding in *Communications Workers* is controlling herein and I conclude deferral is inappropriate.

I reject the Union's contention the Board's decision in *Tri-Pak Machinery, Inc.*, 325 NLRB 671 (1998), compels a different conclusion namely a finding of deferral in the instant case. In *Tri-Pak*, the Board found no merit to the Government's broad assertion: "that deferral to arbitration is inappropriate for questions regarding extensions or renewals of collective-bargaining agreements as to which the parties are in dispute." However, the Board went on to add, "[I]f there is no dispute about the existence of the contract containing the arbitration clause." At the time in July that the Union filed the grievance which it now seeks to have form the basis for deferral to arbitration there existed a real dispute as to whether the contact continued to exist. The Union's conversion to the arbitration route comes too late to be successful because it comes at a time when the Company is unwilling to go to arbitration because of a dispute over whether the contract continues to exist.

C. The Bargaining and Filings

Did the Union between May 29 and June 13, violate the Act when it failed and refused to bargain with regard to collective-bargaining proposals submitted by the Company unless the proposals coincided with proposals submitted by the Union? Additionally, did the Union violated the Act by refusing since June 13, to engage in any further negotiations with the Company toward reaching a collective-bargaining agreement?

The Union contends it was within its contractual rights in refusing to bargain with the Company over those proposals of the Company that were not encompassed within the Union's notice to amend. The Union takes the position that if the Company had wanted to negotiate or bargain over such other items the Company should have sent a notice to amend or a notice to cancel but did neither. The Union contends the absence of a reciprocal notice to amend or notice to cancel is fatal to the Government's and Company's interpretation of the parties collective-bargaining agreement. The Union takes the position that the mere fact that in its notice to amend it cited multiple sections of the parties agreement did not transform its notice to amend into a notice terminate the agreement.

The Government and Company, on the other hand, take the position the Company's February 18 comprehensive collective-bargaining proposal for a 3-year agreement terminating on June 12, 2005, evidenced the Company's intention to terminate the agreement and as such was provided to the Union greater than the required 60 days before the expiration of the contract. Thus, they argue the Union was not privileged to limit negotiations to its (the Union's) proposals.

Does the Company's February 18 proposal satisfy the language of the party's agreement such as to be considered a termination of agreement notice? The termination language of the parties agreement, as noted elsewhere in this decision, in part reads; "Should either party desire to amend or chance this Agreement, such party shall give the other sixty (60) days written notice before the expiration of the contract."

In agreement with the Government and Company I find the Company fulfilled the requirements of the termination clause of the parties collective-bargaining agreement by the actions it took and the Union's reactions and responses thereto. First, the Company made it clear to the Union when it first approached the Union in December 2001, that it needed a new agreement because of price reduction requests from its main customer and escalating health care costs. The Company explained to the Union's entire bargaining committee on December 20, 2001, that it needed early negotiations to try and work out an agreement before June, with June being the expiration date of the parties collective-bargaining agreement. Second, the Union held a general membership meeting on February 14, at which all "union members" were urged to attend "to discuss contract proposals." Third, the parties agreed to and participated in bargaining commencing on February 18, and continuing thereafter through March 8, during the first phase of their negotiations. At the February 18 negotiating session the Company presented a 15-point contract proposal explaining each item which included health insurance, grievance procedures, bargaining unit composition, recall procedures, leaves of absence, vacations, wages, absenteeism, and that the Company was seeking a 3-year agreement with a June 12, 2005 expiration date. Fourth, the Union recognized it was negotiating toward a new collective-bargaining agreement in that it presented its 44-point set of contract proposals at the February 18 negotiating session covering various items including "agreeable wage increases each year of agreement" as well as holidays, retiree insurance benefits, overtime, vacations, parking facilities, job descriptions, modifications to the no-strike clause, pay days, and temporary transfer pay requirements. Fifth, during these February and/or March negotiating sessions the parties arrived at a few

tentative agreements. The parties continued to make, review and exchange proposals during this time to include the Company's making a 30-cent-per-hour wage increase proposal for each of the 3 years of their proposed agreement. The Company's attorney, on March 8, in summarizing the parties negotiating status urged moving toward an agreement "because the contract expires June 14 . . . ." At one point in the March negotiations the Union even proposed a 1-year extension to the collective-bargaining agreement.

In light of the above actions and responses of the Company and Union I am fully persuaded the Company, clearly conveyed the essential message to the Union that it wished to terminate their contract and negotiate a replacement collective-bargaining agreement. That the Union understood that the Company's actions and February 18 contract proposals constituted notice to terminate the agreement is self-evident. The Union actively participated in the negotiations making full contract proposals even proposing a 1-year extension of the parties' agreement. Absolute perfection is not required to give notice to terminate an agreement. For example, the Board in *Oakland Press Co.*, 229 NLRB 476 (1977), upheld a finding by Judge James L. Rose that there had been substantial compliance with the parties termination clause therein even though the party attempting to terminate the agreement had not followed their contract language. Judge Rose concluded, with Board approval, that so long as the essential message was conveyed regarding terminating the agreement, such would be sufficient. In that regard Judge Rose noted that a collective-bargaining agreement is a total document and changes in one or more of its terms necessarily implies termination of the agreement and emergence of a new one. That same rationale applies herein, namely, that the Company's February 18 contract proposals constituted notice to terminate the agreement, thus the Union was precluded from insisting bargaining be limited to its proposals. See also: *Campaign County Contractors Assn.*, 210 NLRB 467 (1974).

Furthermore, the Board has recognized that even when notice is not given, a party, by its actions, may waive notice requirements and agree to bargain. *Industrial Workers AIW Local 770 (Hutco Equipment)*, 285 NLRB 651 fn. 2 and 654 (1987). Here the Union negotiated over an extended period making extensive proposals and responded to several counter proposals. For example, as noted, the Union even proposed a 1-year extension to the parties' agreement. I find the Union herein by its extended negotiations with the Company also waived any contractual termination notification requirements. See: *Lou's Produce*, 308 NLRB 1194, 1200 fn. 4 (1992).

Finally, and out of an abundance of caution, I address the contention by the Government and Company that the Union's March 18 notice to amend the parties collective-bargaining agreement was so broad that, in reality, it constituted a notice to terminate the agreement.

Again in agreement with the Government and Company I find the Union's letter was so broad and nonspecific that it constituted a notice to terminate the agreement notwithstanding the fact the Union's March 18 letter stated, "[P]lease accept this letter as written notice of the Union's desire to amend the agreement." The Union in its letter advised, for example, that acceptance by the membership "of a *collective-bargaining agreement*" was subject to the approval of the Union's International president and continued "there will be no *collective-bargaining agreement* between the Union and [C]ompany until the Company is notified by the International Representative after acquiring approval of the contract in question under the foregoing constitutional provision from the International President." The Union also made an information request for copies of "all signed mutual agreements now in effect which amend or otherwise alter or clarify the agreement, which the [C]ompany intends to no longer honor *upon reaching a new agreement*." The Notice to Mediation Agencies Form the Union submitted to FMCS and attached to its March 18 letter reflects the *contract expiration date as June 13*. As alluded to the Union made an extensive information request in its letter asking for; wage rates and dates of hire for all bargaining unit employees; hourly straight time earning reports; cent-per-hour costs of all fringe benefits; copies of pension and health insurance plans, stock options, and profit and gain sharing plans for unit employees; insurance experience data for unit employees; copies of various government required filings such as IRS-5500 and EEO-1 forms; and, current job evaluations for each job and classification of employees represented by the Union. It is clear from the above references to a collective-bargaining agreement, as well as the all encompassing information request, that the Union was asking, although labeled otherwise, to terminate the parties collective-bargaining agreement and negotiate a new replacement agreement. The Board has held that a notice to amend that is broadly framed, as was the notice herein, is tantamount or equivalent to a notice to terminate. See: *Bridgestone/Firestone, Inc.*, 331 NLRB 205, 208 (2000).

In summary, and for all the above reasons, I find the parties collective-bargaining agreement did not, as contended by the Union, "roll over" extend or renew for an additional year. The Union was not privileged to bargain only about those proposals of the Company that coincided with the proposals it submitted. The Union by bargaining, between May 29 and June 13, only on proposals of its choosing, and refusing to bargain concerning mandatory subjects of bargaining advanced by the Company, violated *Section 8(b)(3) of the Act and I so find*. The Union also violated Section 8(b)(3) of the Act by its refusal to bargain further with the Company after June 13. The Union by its overall conduct on and after May 29, has failed and refused to bargain in good faith with the Company in violation of Section 8(b)(3) of the Act.

CONCLUSIONS OF LAW

1. Local No. 6-0682, Paper, Allied-Industrial Chemical and Energy Workers International Union, AFL–CIO–CLC is a labor organization within the meaning of Section 2(5) of the Act.

2. Checker Motors Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. By refusing between May 29 and June 13, to bargain with regard to collective-bargaining agreement proposals submitted by the Company during negotiations unless such proposals coincided with proposals submitted by the Union; and, since June 13 refusing to engage in any further negotiations toward a collective-bargaining agreement with the Company, the Union

has refused to bargain in good faith with the Company in violation of Section 8(b)(3) of the Act.

4. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Union has violated Section 8(b)(3) of the Act, I order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the purposes of the Act.

I recommend the Union be ordered to meet and bargain in good faith with the Company upon request. I also recommend the Union be ordered, within 14 days after service by the Region, to post an appropriate notice to members for a period of 60 days.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

The Union, Local No. 6-0682, Paper, Allied-Industrial Chemical and Energy Workers International Union, AFL–CIO–CLC, its officers, agents, and representatives, shall

1. Cease and desist from refusing, as the exclusive bargaining representative of the Company's employees in the appropriate unit, to bargain in good faith collectively with the Company.

2.Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request by Checker Motors Corporation, bargain in good faith, as the exclusive bargaining representative of the Company's unit employees, with respect to wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed contract.

(b) Within 14 days after service by the Regional Director for Region 7 of the National Labor Relations Board post at its business office, meeting places and on any Company provided bulletin boards where union materials are posted, copies of the attached Notice to Members marked "Appendix."[11] Copies of the notice to members, on forms provided by the Regional Director for Region 7, after being signed by the Union's authorized representative, shall be posted by the Union upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 7 of the Board a sworn certification of a responsible agent or representative on a form provided by the Region attesting to the steps that the Union has taken to comply.

Dated at Washington D.C. December 12, 2002

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

WE WILL NOT refuse, upon request, to meet and bargain in good faith with Checker Motors Corporation with respect to wages, hours, and other terms and conditions of employment affecting the employees in the appropriate unit.

WE WILL, on request by Checker Motors Corporation, bargain collectively, as the exclusive bargaining representative of the employees in the appropriate unit, with respect to wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed contact.

LOCAL NO. 6-0682, PAPER, ALLIED-INDUSTRIAL CHEMICAL AND ENEGRY WORKERS INTERNATIONAL UNION, AFL–CIO–CLC

[10] If no exceptions are filed as provided by Sec.102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec.102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[11] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."